

105TH CONGRESS
2D SESSION

H. R. 3210

To amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1998

Mr. COBLE introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 17, United States Code, to reform the copyright law with respect to satellite retransmissions of broadcast signals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Compulsory
5 License Improvement Act”.

1 **SEC. 2. SECONDARY TRANSMISSIONS BY SATELLITE CAR-**
2 **RIERS.**

3 Section 119 of title 17, United States Code, is
4 amended—

5 (1) by amending the section heading to read as
6 follows:

7 **“§ 119. Limitations on exclusive rights: Secondary**
8 **transmissions by satellite carriers”;**

9 and

10 (2) by striking subsection (a) and inserting the
11 following:

12 **“(a) SECONDARY TRANSMISSIONS BY SATELLITE**
13 **CARRIERS FOR PRIVATE HOME VIEWING.—**

14 **“(1) SECONDARY TRANSMISSIONS OF DISTANT**
15 **AND LOCAL BROADCAST SIGNALS SUBJECT TO STAT-**
16 **UTORY LICENSING.—**Subject to the provisions of
17 subsections (b) and (c) of this section and section
18 114(d), a secondary transmission of a primary
19 transmission made by a television broadcast station
20 licensed by the Federal Communications Commission
21 or by the Public Broadcasting Service satellite feed
22 and embodying a performance or display of a work
23 shall be subject to statutory licensing under this sec-
24 tion if—

25 **“(A) the secondary transmission is permis-**
26 **sible under the rules, regulations, and author-**

1 izations of the Federal Communications Com-
2 mission and is made by a satellite carrier to the
3 public for private home viewing; and

4 “(B) the carrier makes a direct or indirect
5 charge for each retransmission service to each
6 household receiving the secondary transmission
7 or to a distributor that has contracted with the
8 carrier for direct or indirect delivery of the sec-
9 ondary transmission to the public for private
10 home viewing.

11 “(2) SUBMISSION OF SUBSCRIBER LISTS TO
12 TELEVISION BROADCAST STATIONS.—

13 “(A) INITIAL LISTS.—A satellite carrier
14 that makes secondary transmissions of a pri-
15 mary transmission of a television broadcast sta-
16 tion pursuant to paragraph (1) shall, within 90
17 days after commencing such secondary trans-
18 missions, submit to that television broadcast
19 station—

20 “(i) a list identifying all subscribers
21 within the designated market area of that
22 television broadcast station to whom the
23 satellite carrier has made such secondary
24 transmissions; and

1 “(ii) a list of all television broadcast
2 stations whose primary transmissions have
3 been transmitted by the satellite carrier to
4 those subscribers during that 90-day pe-
5 riod.

6 “(B) SUBSEQUENT LISTS.—After the sub-
7 mission of the lists under subparagraph (A),
8 the satellite carrier shall, on the 15th day of
9 each month, submit to each television broadcast
10 station—

11 “(i) a list, which shall be dated, that
12 identifies the name of any subscriber de-
13 scribed in subparagraph (A) who has been
14 added or dropped since the last submission
15 under this paragraph; and

16 “(ii) a list of all television broadcast
17 stations whose primary transmissions have
18 been added or dropped by the satellite car-
19 rier since the last submission under this
20 paragraph

21 “(C) IDENTIFYING INFORMATION.—(i)
22 Each list of subscribers under this paragraph
23 shall include the name of each subscriber, to-
24 gether with the subscriber’s home address,
25 which shall include the street address or rural

1 route as the case may be, city, county, State,
2 and zip code and, if different from the subscrib-
3 er's home address, the location of the subscrib-
4 er's satellite receiving dish to which the second-
5 ary transmissions are made, identified by street
6 address or rural route as the case may be, city,
7 county, State, and zip code.

8 “(ii) Each list of television broadcast sta-
9 tions under this paragraph shall include the
10 station's call letters and community of license.

11 “(iii) Subscriber information submitted
12 under this paragraph may be used only for pur-
13 poses of monitoring compliance by the satellite
14 carrier with this section.

15 “(iv) The requirements of this paragraph
16 shall apply to a satellite carrier only if the tele-
17 vision broadcast station to which the submis-
18 sions are to be made places on file with the
19 Register of Copyrights a document identifying
20 the name and address of the person to whom
21 such submissions are to be made. The Register
22 shall maintain for public inspection a file of all
23 such documents.

24 “(3) PENALTIES FOR NONCOMPLIANCE WITH
25 ACCOUNTING AND ROYALTY REQUIREMENTS.—Not-

1 withstanding the provisions of paragraph (1), the
2 willful or repeated secondary transmission to the
3 public by a satellite carrier of a primary trans-
4 mission made by a television broadcast station li-
5 censed by the Federal Communications Commission
6 or by the Public Broadcasting Service satellite feed
7 and embodying a performance or display of a work
8 is actionable as an act of infringement under section
9 501, and is fully subject to the remedies provided by
10 sections 502 through 506 and 509, if the satellite
11 carrier has not deposited the statement of account
12 and royalties fees required by subsection (b), or has
13 failed to make the submissions to networks required
14 by paragraph (2).

15 “(4) PENALTIES FOR WILLFUL ALTERATIONS
16 OF PROGRAMMING.—Notwithstanding the provisions
17 of paragraph (1), the secondary transmission to the
18 public by a satellite carrier of a primary trans-
19 mission made by a television broadcast station li-
20 censed by the Federal Communications Commission
21 or by the Public Broadcasting Service satellite feed
22 and embodying a performance or display of a work
23 is actionable as an act of infringement under section
24 501, and is fully subject to the remedies provided by
25 section 502 through 506 and sections 509 and 510,

1 if the content of the particular program in which the
2 performance or display is embodied, or any commer-
3 cial advertising or station announcement transmitted
4 by the primary transmitter during, or immediately
5 before or after, the transmission of such program, is
6 in any way willfully altered by the satellite carrier
7 through changes, deletions, or additions, or is com-
8 bined with programming from any other broadcast
9 signal.

10 “(5) PENALTIES FOR DISCRIMINATION AGAINST
11 DISTRIBUTOR.—Notwithstanding the provisions of
12 paragraph (1), the willful or repeated secondary
13 transmission to the public by a satellite carrier of a
14 primary transmission made by a television broadcast
15 station licensed by the Federal Communications
16 Commission or by the Public Broadcasting Service
17 satellite feed and embodying the performance or dis-
18 play of a work is actionable as an act of infringe-
19 ment under section 501, and is fully subject to the
20 remedies provided by sections 502 through 506 and
21 509, if the satellite carrier unlawfully discriminates
22 against a distributor.

23 “(6) LICENSE LIMITED TO SECONDARY TRANS-
24 MISSIONS TO HOUSEHOLDS IN THE UNITED
25 STATES.—The statutory license created by this sec-

1 tion shall apply only to secondary transmissions to
2 households located in the United States.”.

3 **SEC. 3. STATUTORY LICENSE FOR SATELLITE CARRIERS.**

4 Section 119 of title 17, United States Code, is
5 amended by striking subsection (b) and inserting the fol-
6 lowing:

7 “(b) STATUTORY LICENSE FOR SECONDARY TRANS-
8 MISSIONS FOR PRIVATE HOME VIEWING.—

9 “(1) DEPOSIT OF ACCOUNTS AND FEES WITH
10 REGISTER OF COPYRIGHTS.—A satellite carrier
11 whose secondary transmissions are subject to statu-
12 tory licensing under subsection (a) shall, on a semi-
13 annual basis, deposit with the Register of Copy-
14 rights, in accordance with requirements that the
15 Register shall prescribe by regulation—

16 “(A) a statement of account, covering the
17 preceding 6-month period, specifying the names
18 and locations of all television broadcast stations
19 whose signals were retransmitted, and listing
20 the Public Broadcasting Service satellite feed, if
21 carried, at any time during that period, to sub-
22 scribers for private home viewing, the total
23 number of subscribers that received such re-
24 transmissions, and other such data as the Reg-

1 ister of Copyrights may from time to time pre-
2 scribe by regulation; and

3 “(B) a royalty fee for that 6-month period
4 for each television broadcast station whose pri-
5 mary transmission was retransmitted beyond
6 the local market of the station, and for the
7 Public Broadcasting Service satellite feed, if
8 carried, computed by multiplying the total num-
9 ber of subscribers receiving the secondary
10 transmission, and the number of subscribers re-
11 ceiving a secondary transmission of the Public
12 Broadcasting Service satellite feed, during each
13 calendar month by the rate in effect for tele-
14 vision broadcast stations on the day before the
15 effective date of the Copyright Compulsory Li-
16 cense Improvement Act.

17 “(2) INVESTMENT OF FEES.—The Register of
18 Copyrights shall receive all fees deposited under this
19 section and, after deducting the reasonable costs in-
20 curred by the Copyright Office under this section
21 (other than the costs deducted under paragraph
22 (4)), shall deposit the balance in the Treasury of the
23 United States, in such manner as the Secretary of
24 the Treasury directs. All funds held by the Secretary
25 of the Treasury shall be invested in interest-bearing

1 securities of the United States for later distribution
2 with interest by the Copyright Royalty Adjudication
3 Board as provided in this title. The Register may,
4 four or more years after the close of any calendar
5 year, close out the account for royalty payments
6 made under this section for that calendar year (in-
7 cluding payments made under this section as in ef-
8 fect before the effective date of the Copyright Com-
9 pulsory License Improvement Act), and may treat
10 any funds remaining in such account and any subse-
11 quent deposits that would otherwise be attributable
12 to that calendar year as attributable to the calendar
13 year in which the account is closed.

14 “(3) PERSONS TO WHOM FEES ARE DISTRIB-
15 UTED.—The royalty fees deposited under paragraph
16 (2) shall, in accordance with the procedures provided
17 in paragraph (4), be distributed to those copyright
18 owners whose works were included in a secondary
19 transmission for private home viewing made by a
20 satellite carrier during the applicable 6-month ac-
21 counting period and who file a claim with the Li-
22 brarian of Congress under paragraph (4).

23 “(4) PROCEDURES FOR DISTRIBUTION.—The
24 royalty fees deposited under paragraph (2) shall be

1 distributed in accordance with the following proce-
2 dures:

3 “(A) FILING OF CLAIMS FOR FEES.—Dur-
4 ing the month of July in each year, each person
5 claiming to be entitled to statutory license fees
6 for secondary transmissions for private home
7 viewing shall file a claim with the Copyright
8 Royalty Adjudication Board, in accordance with
9 requirements that the Board shall prescribe by
10 regulation. For purposes of this paragraph, any
11 claimants may agree among themselves as to
12 the proportionate division of statutory license
13 fees among them, may lump their claims to-
14 gether and file them jointly or as a single claim,
15 or may designate a common agent to receive
16 payment on their behalf.

17 “(B) DETERMINATION OF CONTROVERSY;
18 DISTRIBUTIONS.—After the first day of August
19 of each year, the Copyright Royalty Adjudica-
20 tion Board shall determine whether there exists
21 a controversy concerning the distribution of roy-
22 alty fees. If the Board determines that no such
23 controversy exists, the Board shall, after de-
24 ducting reasonable administrative costs under
25 this paragraph, distribute such fees to the copy-

right owners entitled to receive them, or to their designated agents. If the Board finds the existence of a controversy, the Board shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Adjudication Board shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.”.

SEC. 4. DEFINITIONS.

Section 119 of title 17, United States Code, is amended by striking subsection (d) and inserting the following:

“(d) DEFINITIONS.—As used in this section—

“(1) DESIGNATED MARKET AREA.—The term ‘designated market area’ has the meaning given that term in section 337(g) of the Communications Act of 1934.

“(2) DISTRIBUTOR.—The term ‘distributor’ means an entity which contracts to distribute sec-

1 ondary transmissions from a satellite carrier and, ei-
2 ther as a single channel or in a package with other
3 programming, provides the secondary transmission
4 either directly to individual subscribers for private
5 home viewing or indirectly through other program
6 distribution entities.

7 “(3) LOCAL MARKET.—The ‘local market’ for a
8 television broadcast station has the meaning given
9 that term in section 337(g) of the Communications
10 Act of 1934.

11 “(4) PRIMARY TRANSMISSION.—The term ‘pri-
12 mary transmission’ has the meaning given that term
13 in section 111(f) of this title.

14 “(5) PRIVATE HOME VIEWING.—The term ‘pri-
15 vate home viewing’ means the viewing, for private
16 use in a household by means of satellite reception
17 equipment which is operated by an individual in that
18 household and which serves only such household, of
19 a secondary transmission delivered by a satellite car-
20 rier of a primary transmission of a television station
21 licensed by the Federal Communications Commission
22 or of the Public Broadcasting Service satellite feed.

23 “(6) PUBLIC BROADCASTING SERVICE SAT-
24 ELLITE FEED.—The term ‘Public Broadcasting
25 Service satellite feed’ means the national satellite

1 feed distributed by the Public Broadcasting Service
2 (other than the transmissions that may not be
3 encrypted under section 705(c) of the Communica-
4 tions Act of 1934), consisting of educational and in-
5 formational programming intended for private home
6 viewing, to which the Public Broadcasting Service
7 has obtained national terrestrial broadcast rights.

8 “(7) SATELLITE CARRIER.—The term ‘satellite
9 carrier’ means an entity that uses the facilities of a
10 satellite or satellite service licensed by the Federal
11 Communications Commission, and operates in the
12 Fixed-Satellite Service under part 25 of title 47,
13 Code of Federal Regulations (as in effect on Feb-
14 ruary 1, 1998), or the Direct Broadcast Satellite
15 Service under part 100 of title 47, Code of Federal
16 Regulations (as in effect on February 1, 1998), to
17 establish and operate a channel of communications
18 for point-to-multipoint distribution of television sta-
19 tion signals, and that owns or leases a capacity or
20 service on a satellite in order to provide such point-
21 to-multipoint distribution, except to the extent that
22 such entity provides such distribution pursuant to
23 tariff under the Communications Act of 1934, other
24 than for private home viewing.

1 “(8) SECONDARY TRANSMISSION.—The term
2 ‘secondary transmission’ means the further trans-
3 mitting of a primary transmission simultaneously
4 with the primary transmission.

5 “(9) SUBSCRIBER.—The term ‘subscriber’
6 means an individual who receives a secondary trans-
7 mission service for private home viewing by means
8 of a secondary transmission from a satellite carrier
9 and pays a fee for the service, directly or indirectly,
10 to the satellite carrier or to a distributor.

11 “(10) TELEVISION BROADCAST STATION.—The
12 term ‘television broadcast station’ means an over-
13 the-air, commercial or noncommercial television
14 broadcast station licensed by the Federal Commu-
15 nications Commission under subpart E of part 73 of
16 title 47, Code of Federal Regulations.”.

17 **SEC. 5. EXCLUSIVITY OF SECTION 119 OF TITLE 17, UNITED**
18 **STATES CODE.**

19 Section 119 of title 17, United States Code, is
20 amended by adding at the end the following:

21 “(e) EXCLUSIVITY FOR THIS SECTION WITH RE-
22 SPECT TO SECONDARY TRANSMISSIONS OF TELEVISION
23 STATIONS BY SATELLITE TO MEMBERS OF THE PUB-
24 LIC.—No provision of section 111 of this title or any other
25 law (other than this section) shall be construed to contain

1 any authorization, exemption, or license through which
 2 secondary transmissions by satellite carriers for private
 3 home viewing of programming contained in a primary
 4 transmission may be made without obtaining the consent
 5 of the copyright owner.”.

6 **SEC. 6. CONFORMING AMENDMENT.**

7 The table of contents for chapter 1 of title 17, United
 8 States Code, is amended by striking the item relating to
 9 section 119 and inserting the following:

“119. Limitations on exclusive rights: Secondary transmissions by satellite car-
 riers.”.

10 **SEC. 7. COPYRIGHT ROYALTY ADJUDICATION BOARD.**

11 (a) ESTABLISHMENT AND FUNCTIONS.—Chapter 8
 12 of title 17, United States Code, is amended to read as
 13 follows:

14 **“CHAPTER 8—COPYRIGHT ROYALTY**
 15 **ADJUDICATION BOARD**

“Sec.

“801. Copyright Royalty Adjudication Board: establishment.

“802. Membership and qualifications of the Board.

“803. Selection of administrative copyright judges.

“804. Independence of the Board.

“805. Removal and sanction of administrative copyright judges.

“806. Functions.

“807. Factors for determining royalty fees.

“808. Institution of proceedings.

“809. Conduct of proceedings.

“810. Judicial review.

“811. Administrative matters.

1 **“§ 801. Copyright Royalty Adjudication Board: estab-**
2 **lishment**

3 “There is hereby established within the Copyright Of-
4 fice the Copyright Royalty Adjudication Board (herein-
5 after referred to in this chapter as the ‘Board’).

6 **“§ 802. Membership and qualifications of the Board**

7 “(a) MEMBERSHIP.—The Board shall consist of one
8 full-time chief administrative copyright judge, and such
9 part-time administrative copyright judges as the Librarian
10 of Congress, upon the recommendation of the Register of
11 Copyrights, finds necessary to conduct the business of the
12 Board in a timely manner. At no time shall the number
13 of authorized administrative copyright judges be less than
14 three or more than five.

15 “(b) QUALIFICATIONS.—

16 “(1) CHIEF ADMINISTRATIVE COPYRIGHT
17 JUDGE.—The chief administrative copyright judge
18 shall be an attorney with 10 or more years of legal
19 practice with demonstrated experience in administra-
20 tive hearings or court trials and demonstrated
21 knowledge of copyright law.

22 “(2) OTHER ADMINISTRATIVE COPYRIGHT
23 JUDGES.—Each administrative copyright judge,
24 other than the chief administrative copyright judge,
25 shall be an individual with expertise in the business

1 and economics of industries affected by the actions
2 taken by the Board to carry out its functions.

3 “(c) TERMS.—(1) The term of each administrative
4 copyright judge (including the chief administrative copy-
5 right judge) shall be 5 years, except that, of the first ad-
6 ministrative copyright judges appointed, the Librarian of
7 Congress, upon the recommendation of the Register of
8 Copyrights, shall appoint all but one of them to lesser
9 terms to establish a staggering of terms such that in any
10 calendar year no more than one term is due to expire.

11 “(2) The term of each administrative copyright judge
12 (including the chief administrative copyright judge) shall
13 begin when the term of the predecessor of that member
14 ends. An individual appointed to fill the vacancy occurring
15 before the expiration of the term for which the predecessor
16 of that individual was appointed shall be appointed for the
17 remainder of that term. When the term of office of a mem-
18 ber ends, the member may continue to serve until a succes-
19 sor is selected.

20 “(d) COMPENSATION.—The compensation of the ad-
21 ministrative copyright judges shall be governed solely by
22 the provisions of section 5376 of title 5 and such regula-
23 tions as the Librarian of Congress may adopt that are not
24 inconsistent with that section. The compensation of the
25 administrative copyright judges shall not be subject to any

1 regulations adopted by the Office of Personnel Manage-
2 ment pursuant to its authority under section 5376(b)(1)
3 of title 5.

4 **“§ 803. Selection of administrative copyright judges**

5 “(a) SELECTION.—(1) The Librarian of Congress,
6 upon the recommendation of the Register of Copyrights,
7 shall select the administrative copyright judges (including
8 the chief administrative copyright judge) among individ-
9 uals found qualified under section 802(b) and free of any
10 financial conflict of interest under section 805(a).

11 “(2) Administrative copyright judges previously se-
12 lected by the Librarian of Congress may be selected to
13 serve additional terms. There shall be no limit on the num-
14 ber of terms any individual may serve.

15 “(b) EFFECT OF VACANCY.—If any vacancy should
16 occur among the administrative copyright judges, the Li-
17 brarian of Congress shall act expeditiously to fill the va-
18 cancy, but in no event shall a vacancy in the Board impair
19 the right of the remaining administrative copyright judges
20 to exercise all of the powers of the Board.

21 **“§ 804. Independence of the Board**

22 “(a) IN GENERAL.—The Board shall have independ-
23 ence in reaching its determinations concerning the adjust-
24 ment of copyright royalty rates, the distribution of copy-
25 right royalties, the acceptance or rejection of royalty

1 claims and rate adjustment petitions, and such rulemaking
 2 functions as are delegated to it under this title.

3 “(b) PERFORMANCE APPRAISALS.—Notwithstanding
 4 any other provision of law or any regulation of the Library
 5 of Congress, no administrative copyright judge shall re-
 6 ceive an annual performance appraisal. To the extent that
 7 such removal or sanction regulations as the Librarian of
 8 Congress may adopt pursuant to section 805 requires doc-
 9 umentation to establish the cause of such removal or sanc-
 10 tion, the administrative copyright judge may receive an
 11 appraisal related specifically to the cause of the removal
 12 or sanction.

13 “(c) INCONSISTENT DUTIES BARRED.—No adminis-
 14 trative copyright judge may be assigned duties inconsis-
 15 tent with his or her duties and responsibilities as a admin-
 16 istrative copyright judge.

17 **“§ 805. Removal and sanction of administrative copy-**
 18 **right judges**

19 “(a) STANDARDS OF CONDUCT.—The Librarian of
 20 Congress, upon the recommendation of the Register of
 21 Copyrights, shall adopt regulations regarding the stand-
 22 ards of conduct, including financial conflict of interest and
 23 restrictions against ex parte communications, which shall
 24 govern the administrative copyright judges and the pro-
 25 ceedings under this chapter.

1 “(b) REMOVAL OR SANCTION.—The Librarian of
2 Congress, upon the recommendation of the Register of
3 Copyrights, may remove or sanction an administrative
4 copyright judge for violation of the standards of conduct
5 adopted under subsection (a), misconduct, neglect of duty,
6 or any disqualifying physical or mental disability. Any
7 such removal or sanction may be made only after notice
8 and opportunity for hearing, but the Librarian of Con-
9 gress, upon the recommendation of the Register of Copy-
10 rights, may suspend the administrative copyright judge
11 during the pendency of such hearing.

12 **“§ 806. Functions**

13 “Subject to the provisions of this chapter, the func-
14 tions of the Board shall be—

15 “(1) to make determinations concerning the ad-
16 justment of reasonable copyright royalty rates for—

17 “(A) secondary transmissions to the public
18 by a cable system of a primary transmission as
19 provided in section 111;

20 “(B) the making and distributing of
21 phonorecords by means other than digital pho-
22 norecord delivery, as provided in section 115;

23 “(C) secondary transmissions to the public
24 by a satellite carrier of a primary transmission
25 as provided in section 119; and

1 “(D) each digital audio recording device
2 imported into and distributed in the United
3 States or manufactured and distributed into the
4 United States as provided in section 1004; and
5 “(2) to make determinations as to reasonable
6 rates and terms of royalty payments for—

7 “(A) the public performance of a sound re-
8 cording by means of a digital audio trans-
9 mission as provided in section 114;

10 “(B) the making and distribution of
11 phonorecords by means of a digital phonorecord
12 delivery as provided in section 115;

13 “(C) the public performance of nondra-
14 matic musical works by means of coin-operated
15 phonorecord players as provided in section 116;

16 “(D) the use of nondramatic musical works
17 and pictorial, graphic, and sculptural works by
18 public broadcasting entities as provided in sec-
19 tion 118; and

20 “(E) secondary transmissions to the public
21 by a satellite carrier of a primary transmission
22 of a public telecommunications signal as pro-
23 vided in section 119;

24 “(3) to accept or reject royalty claims filed
25 under sections 111, 119, and 1007, on the basis of

1 timeliness or the failure to establish the basis for a
2 claim;

3 “(4) to determine, in cases where controversy
4 exists, the distribution of royalty fees deposited with
5 the Register of Copyrights under sections 111, 119,
6 and 1003;

7 “(5) to determine the status of a digital audio
8 recording device or a digital audio interface device
9 under sections 1002 and 1003, as provided in sec-
10 tion 1010; and

11 “(6) to engage in such rulemaking as is ex-
12 pressly provided in sections 111, 114, 115, 118, and
13 119.

14 **“§ 807. Factors for determining royalty fees**

15 “(a) FOR CABLE RATES.—The rates applicable
16 under section 111 shall be calculated solely in accordance
17 with the following provisions:

18 “(1) The rates established by section
19 111(d)(1)(B) may be adjusted to reflect—

20 “(A) national monetary inflation or defla-
21 tion, or

22 “(B) changes in the average rates charged
23 cable subscribers for the basic service of provid-
24 ing secondary transmissions to maintain the
25 real constant dollar level of the royalty fee per

1 subscriber which existed as of October 19,
2 1976, except that—

3 “(i) if the average rates charged cable
4 system subscribers for the basic service of
5 providing secondary transmissions are
6 changed so that the average rates exceed
7 national monetary inflation, no change in
8 the rates established by section
9 111(d)(1)(B) shall be permitted; and

10 “(ii) no increase in the royalty fee
11 shall be permitted based on any reduction
12 in the average number of distant signal
13 equivalents per subscriber.

14 The Board may consider all factors relating to the
15 maintenance of such level of payments including, as
16 an extenuating factor, whether the cable industry
17 has been restrained by subscriber rate regulating au-
18 thorities from increasing the rates for the basic serv-
19 ice of providing secondary transmissions.

20 “(2) In the event that the rules and regulations
21 of the Federal Communications Commission are
22 amended at any time after April 15, 1976, to permit
23 the carriage by cable systems of additional television
24 broadcasting signals beyond the local service area of
25 the primary transmitters of such signals, the royalty

1 rates established by section 111(d)(1)(B) may be ad-
2 justed to insure that the rates for the additional dis-
3 tant signal equivalents resulting from such carriage
4 are reasonable in light of the changes effected by the
5 amendment to such rules and regulations. In deter-
6 mining the reasonableness of rates proposed follow-
7 ing an amendment of Federal Communications Com-
8 mission rules and regulations, the Board shall con-
9 sider, among other factors, the economic impact on
10 copyright owners and users, except that no adjust-
11 ment in royalty rates shall be made under this para-
12 graph with respect to any distant signal equivalent
13 or fraction thereof represented by—

14 “(A) carriage of any signal permitted
15 under the rules and regulations of the Federal
16 Communications Commission in effect on April
17 15, 1976, or the carriage of a signal of the
18 same type (that is, independent, network, or
19 noncommercial educational) substituted for
20 such permitted signal, or

21 “(B) a television broadcast signal first car-
22 ried after April 15, 1976, pursuant to an indi-
23 vidual waiver of the rules and regulations of the
24 Federal Communications Commission, as such

1 rules and regulations were in effect on April 15,
2 1976.

3 “(3) In the event of any change in the rules
4 and regulations of the Federal Communications
5 Commission with respect to syndicated and sport
6 program exclusivity after April 15, 1976, the rates
7 established by section 111(d)(1)(B) may be adjusted
8 to assure that such rates are reasonable in light of
9 the changes to such rules and regulations, but any
10 such adjustment shall apply only to the affected tele-
11 vision broadcast signals carried on those systems af-
12 fected by the change.

13 “(4) The gross receipts limitations established
14 by section 111(d)(1) (C) and (D) shall be adjusted
15 to reflect national monetary inflation or deflation or
16 changes in the average rates charged cable system
17 subscribers for the basic service of providing second-
18 ary transmissions to maintain the real constant dol-
19 lar value of the exemption provided by such section,
20 and the royalty rate specified therein shall not be
21 subject to adjustment.

22 “(b) FOR RATES OTHER THAN CABLE OR SAT-
23 ELLITE CARRIERS.—The rates applicable under sections
24 114, 115, 116, and 118 shall be calculated to achieve the
25 following objectives:

1 “(1) To maximize the availability of creative
2 works to the public.

3 “(2) To afford the copyright owner a fair re-
4 turn for his or her creative work and the copyright
5 user a fair income under existing economic condi-
6 tions.

7 “(3) To reflect the relative roles of the copy-
8 right owner and the copyright user in the product
9 made available to the public with respect to relative
10 creative contribution, technological contribution, cap-
11 ital investment, cost, risk, and contribution to the
12 opening of new markets for creative expression and
13 media for their communications.

14 “(4) To minimize any disruptive impact on the
15 structure of the industries involved and on generally
16 prevailing industry practices.

17 “(c) FOR RATES FOR NONCOMMERCIAL BROADCAST-
18 ING.—The rates applicable under section 118 shall be cal-
19 culated to achieve reasonable rates. In determining rea-
20 sonable rates, the Board shall base its decision so as to—

21 “(1) assure a fair return to copyright owners;

22 “(2) encourage the growth and development of
23 public broadcasting; and

24 “(3) encourage musical and artistic creation.

1 “(d) RATES FOR SATELLITE CARRIERS.—The rates
2 applicable under section 119 shall be calculated to rep-
3 resent most clearly the fair market value of secondary
4 transmissions. In determining the fair market value, the
5 Board shall base its decision on economic, competitive,
6 and programming information presented by the parties,
7 including—

8 “(1) the competitive environment in which such
9 programming is distributed, the cost for similar sig-
10 nals in similar private and compulsory license mar-
11 ketplaces, and any special features and conditions of
12 the retransmission marketplace;

13 “(2) the economic impact of such fees on copy-
14 right owners and satellite carriers; and

15 “(3) the impact on the continued availability of
16 secondary transmissions to the public.

17 **“§ 808. Institution of proceedings**

18 “(a) PETITION REQUIRED TO INSTITUTE PROCEED-
19 INGS.—With respect to proceedings concerning the adjust-
20 ment of royalty rates as provided in sections 111, 114,
21 115, 116, and 119, during the calendar years or under
22 the circumstances specified in the schedule set forth in
23 subsection (c), any owner or user of a copyrighted work
24 whose royalty rates are to be established or adjusted by
25 the Board may file a petition with the Board declaring

1 that the petitioner requests an adjustment of the rate. The
2 Board shall make a determination as to whether the peti-
3 tioner has a significant interest in the royalty rate in
4 which an adjustment is requested. If the Board determines
5 that the petitioner has a significant interest, the Board
6 shall cause notice of this determination, with the reasons
7 therefor, to be published in the Federal Register, together
8 with the notice of commencement of proceedings under
9 this chapter. With respect to proceedings concerning the
10 adjustment of royalty rates under section 1004, any inter-
11 ested copyright party may petition the Board as provided
12 in that section.

13 “(b) PETITION NOT REQUIRED TO INSTITUTE PRO-
14 CEEDINGS.—With respect to proceedings concerning the
15 adjustment of royalty rates as provided in section 118 and
16 the distribution of royalties as provided in section 111,
17 119, and 1007, no petition is required to institute proceed-
18 ings. All proceedings concerning the adjustment of rates
19 under section 118 shall commence as provided in section
20 118(c) of this title. All proceedings concerning the dis-
21 tribution of royalties under section 111, 119, or 1007 shall
22 commence as provided in such sections and in subsection
23 (c)(8) of this section.

24 “(c) SCHEDULE OF PROCEEDINGS.—

1 “(1) SECTION 111 PROCEEDINGS.—In proceed-
2 ings concerning the adjustment of royalty rates as
3 provided in section 111, a petition described in sub-
4 section (a) may be filed during the year 2000 and
5 in each subsequent fifth calendar year, except that
6 in the event that the rules and regulations of the
7 Federal Communications Commission are amended
8 with respect to distant signal importation, or to syn-
9 dicated and sports program exclusivity, any owner or
10 user of a copyrighted work subject to the royalty
11 rates established or adjusted pursuant to section
12 111 may, within 12 months after such amendments
13 take effect, file a petition with the Board to institute
14 proceedings to insure that the rates are reasonable
15 in light of the changes to such rules and regulations.
16 Any such adjustments shall apply only to the af-
17 fected television broadcast signals carried on those
18 systems affected by the change. Any change in roy-
19 alty rates made pursuant to this subsection may be
20 reconsidered in the year 2000, and each fifth cal-
21 endar year thereafter, as the case may be.

22 “(2) SECTION 114 PROCEEDINGS.—In proceed-
23 ings concerning the adjustment of royalty rates and
24 terms as provided in section 114, the Board shall
25 proceed when and as provided by that section.

1 “(3) SECTION 115 PROCEEDINGS.—In proceed-
2 ings concerning the adjustment of royalty rates and
3 terms as provided in section 115, a petition de-
4 scribed in subsection (a) may be filed in the year
5 2007 and in each subsequent tenth calendar year or
6 as prescribed in section 115(c)(3).

7 “(4) SECTION 116 PROCEEDINGS.—(A) In pro-
8 ceedings concerning the adjustment of royalty rates
9 as provided in section 116, a petition described in
10 subsection (a) may be filed at any time within 1
11 year after negotiated licenses authorized by section
12 116 are terminated or expire or are not replaced by
13 subsequent agreements.

14 “(B) If a negotiated license authorized by sec-
15 tion 116 is terminated or expires and is not replaced
16 by another such license agreement which provides
17 permission to use a quantity of musical works not
18 substantially smaller than the quantity of such
19 works performed on coin-operated phonorecord play-
20 ers during the 1-year period ending March 1, 1989,
21 the Board, upon petition filed under subsection (a)
22 within 1 year after such termination or expiration,
23 shall promptly establish an interim royalty rate or
24 rates for the public performance by means of a coin-
25 operated phonorecord player of nondramatic musical

1 works embodied in phonorecords which had been
2 subject to the terminated or expired negotiated li-
3 cense agreement. Such rate or rates shall be the
4 same as the last such rate or rates and shall remain
5 in force until the conclusion of the proceedings to
6 adjust the royalty rates applicable to such works, or
7 until superseded by a new negotiated license agree-
8 ment, as provided in section 116(b).

9 “(5) SECTION 118 PROCEEDINGS.—In proceed-
10 ings concerning the adjustment of royalty rates and
11 terms as provided in section 118, the Board shall
12 proceed when and as provided by that section.

13 “(6) SECTION 119 PROCEEDINGS.—In proceed-
14 ings concerning the adjustment of royalty rates gov-
15 erning secondary transmissions of as provided in
16 section 119, a petition described in subsection (a)
17 may be filed during the year 2001 and in each sub-
18 sequent fifth calendar year.

19 “(7) PROCEEDINGS CONCERNING DISTRIBUTION
20 OF ROYALTY FEES.—In proceedings concerning the
21 distribution of royalty fees under section 111, 119,
22 or 1007, the Board shall, upon a determination that
23 a controversy exists concerning such distribution,
24 cause to be published in the Federal Register notice
25 of commencement of proceedings under this chapter.

1 **“§ 809. Conduct of proceedings**

2 “(a) BOARD PROCEEDINGS.—The Board shall, for
3 the purposes of making its determinations in carrying out
4 the functions set forth in section 806, conduct proceedings
5 subject to subchapter II of chapter 5 of title 5.

6 “(b) PROCEDURES.—The Librarian of Congress,
7 upon the recommendation of the Register of Copyrights,
8 and in consultation with the Board, shall adopt regula-
9 tions to govern the conduct of the proceedings of the
10 Board. The regulations shall include, but not be limited
11 to, provisions for—

12 “(1) public access to and inspection of the
13 records of the Board pursuant to section 706;

14 “(2) the right of the public to attend the pro-
15 ceedings of the Board;

16 “(3) the procedures to apply when formal hear-
17 ings are conducted; and

18 “(4) the procedures to apply and the basis upon
19 which distribution or royalty controversies may be
20 decided on the basis of written pleadings.

21 “(c) PARTICIPATION OF COPYRIGHT OFFICE.—Not-
22 withstanding any regulations adopted under subsection
23 (b)(3), during the conduct of proceedings, the Register of
24 Copyrights may file formally with the Board the position
25 of the Copyright Office on any matter before the Board.
26 Such filings shall be served on all parties to the proceed-

1 ing. The Board may accept or reject the position of the
2 Copyright Office.

3 “(d) MAJORITY RULE.—The Board shall act in all
4 procedural and substantive matters on the basis of major-
5 ity rule.

6 “(e) NUMBER OF PRESIDING JUDGES.—The Board
7 shall decide, in its discretion, whether 1 or 3 administra-
8 tive copyright judges shall preside in a royalty distribution
9 or rate adjustment proceeding. In no event shall the num-
10 ber of presiding administrative copyright judges be more
11 than 3.

12 “(f) PARTICIPATION OF PARTIES.—Any copyright
13 owner who has filed an acceptable claim claiming entitle-
14 ment to the distribution of royalties, or any copyright
15 owner or user who would be affected by a royalty rate to
16 be established or adjusted by the Board, may submit rel-
17 evant information and proposals to the Board in proceed-
18 ings applicable to the interest of the copyright owner or
19 user.

20 “(g) TIME LIMITS FOR INITIAL DECISION.—Proceed-
21 ings under section 118 operate under the time limits es-
22 tablished in that section. For all other proceedings, if 1
23 administrative copyright judge is presiding in a proceed-
24 ing, the Board shall issue its initial decision to the parties
25 to the proceeding and the Register of Copyrights within

1 6 months after the declaration of a controversy in the pro-
2 ceeding. If more than 1 administrative copyright judge is
3 presiding in a proceeding, the Board shall issue its initial
4 decision to the parties to the proceeding and the Register
5 of Copyrights within 1 year after the declaration of a con-
6 troversy in the proceeding.

7 “(h) REQUIREMENTS FOR INITIAL DECISIONS.—The
8 initial decision under subsection (g) shall include a state-
9 ment of findings and conclusions and the reasons or basis
10 therefor, on all the material issues of fact, law, or discre-
11 tion presented on the record. The initial decision shall take
12 into account prior decisions of the Copyright Royalty Tri-
13 bunal, prior decisions of copyright arbitration royalty pan-
14 els, and the procedural and evidentiary rulings the Librar-
15 ian of Congress made that were applicable to the proceed-
16 ings of the copyright arbitration royalty panels. Notwith-
17 standing any provision of section 603 or 604 of title 5,
18 neither the initial decision nor the final decision is re-
19 quired to include a regulatory flexibility analysis.

20 “(i) PETITIONS FOR RECONSIDERATION AND FINAL
21 AGENCY ACTION.—Any party to the proceeding concerned
22 or the Register of Copyrights may petition the Board to
23 reconsider its initial decision in the proceeding. If there
24 are no petitions for reconsideration, the initial decision be-
25 comes the final decision of the Board without further pro-

1 ceedings. If there are petitions for reconsideration, the
2 Board shall issue a final decision to the parties to the pro-
3 ceeding and the Register of Copyrights which shall con-
4 stitute final agency action. The time period by which par-
5 ties to the proceeding or the Register of Copyrights may
6 file a petition for reconsideration and the time period by
7 which the Board shall render its final decision shall be
8 established by regulation by the Board, subject to the ap-
9 proval of the Register of Copyrights.

10 **“§ 810. Judicial review**

11 “(a) APPEALS.—Within 1 week after the Board
12 issues a final decision under section 809, or, if there are
13 no petitions for reconsideration, within one week after the
14 time the initial decision of the Board under section 809
15 becomes the final decision, the Board shall cause to be
16 published in the Federal Register the decision of the rate
17 adjustment or the royalty distribution, as the case may
18 be. Any aggrieved party who would be bound by the final
19 decision may appeal the decision to the United States
20 Court of Appeals for the Federal Circuit within 30 days
21 after the publication of the decision in the Federal Reg-
22 ister. In any appeal to which the Board is a party, the
23 chief administrative copyright judge shall refer the con-
24 duct of the litigation in defense of the Board’s decision
25 to the Department of Justice. If no appeal is brought

1 within such 30-day period, the decision of the Board is
 2 final, and the royalty fee or determination with respect
 3 to the distribution of fees, as the case may be, shall take
 4 effect as set forth in the decision. The pendency of an ap-
 5 peal under this paragraph shall not relieve persons obli-
 6 gated to make royalty payments under section 111, 114,
 7 115, 116, 118, 119, or 1003 who would be affected by
 8 the determination on appeal to deposit the statement of
 9 account and royalty fees specified in those sections.

10 “(b) REVIEW SUBJECT TO CHAPTER 7 OF TITLE
 11 5.—The judicial review of the Board’s final decision shall
 12 be had, in accordance with chapter 7 of title 5, on the
 13 basis of the record before the Board.

14 **“§ 811. Administrative matters**

15 “(a) ADMINISTRATIVE SUPPORT.—The Library of
 16 Congress, upon the recommendation of the Register of
 17 Copyrights, shall provide the Board with the necessary ad-
 18 ministrative services and permanent personnel related to
 19 proceedings under this title. The Board may procure tem-
 20 porary and intermittent services to the same extent as is
 21 authorized by sections 3109 and 5376 of title 5.

22 “(b) AUTHORITY TO PUBLISH IN FEDERAL REG-
 23 ISTER.—The actions of the Board which may be published
 24 in the Federal Register by and under the authority of the
 25 Board include—

1 “(1) actions of the Board required to be pub-
2 lished in the Federal Register under this title;

3 “(2) actions of the Board required to be pub-
4 lished in the Federal Register under regulations
5 adopted by the Board upon the approval of the Reg-
6 ister of Copyrights; and

7 “(3) regulations of the Board required to be
8 published in the Federal Register to which the
9 Board has been delegated the exclusive right to
10 adopt.

11 “(c) DEDUCTION OF COSTS FROM ROYALTY FEES.—
12 The Register of Copyrights may, to the extent not other-
13 wise provided under this title, deduct from royalty fees de-
14 posited or collected under this title the reasonable costs
15 incurred by the Copyright Office and the Board under this
16 chapter. Such deduction may be made before the fees are
17 distributed to any copyright claimants. In addition, all
18 funds made available by an appropriations Act as offset-
19 ting collections and available for decisions under this sub-
20 section shall remain available until expended. In rate-
21 making proceedings, the reasonable costs of the Copyright
22 Office and the Board shall be borne by the parties in such
23 manner and proportion as the Board shall direct.

24 “(d) POSITIONS REQUIRED FOR ADMINISTRATION OF
25 COMPULSORY LICENSING.—Section 307 of the Legislative

1 Branch Appropriations Act of 1994 shall not apply to the
 2 members of the Board, employee positions in the Board,
 3 or employee positions in the Library of Congress that are
 4 required to be filled in order to carry out section 111, 114,
 5 115, 116, 118, or 119 or chapter 10.

6 “(e) BUDGET.—In each annual request for appro-
 7 priations, the Register of Copyrights shall identify the por-
 8 tion thereof intended for the support of the Board and
 9 a statement which shall include an assessment of the
 10 budgetary needs of the Board.

11 “(f) ANNUAL REPORT.—The Board shall prepare an
 12 annual report of its work and accomplishments during
 13 each fiscal year, which the Register of Copyrights shall
 14 include in the annual report required under section
 15 701(c).”.

16 (b) CONFORMING AMENDMENT.—The item relating
 17 to chapter 8 in the table of chapters for title 17, United
 18 States Code, is amended to read as follows:

“8. Copyright Royalty Adjudication Board 801”.

19 **SEC. 8. TRANSITION PROVISIONS.**

20 (a) TRANSITIONAL PROCEDURES.—During the pe-
 21 riod beginning on the date of the enactment of this Act
 22 and ending on the effective date of this Act, the Register
 23 of Copyrights shall adopt regulations to govern proceed-
 24 ings under chapter 8 of title 17, United States Code, as
 25 amended by section 7 of this Act. Such regulations shall

1 remain in effect unless and until the Copyright Royalty
2 Adjudication Board, upon the approval of the Register of
3 Copyrights, adopts supplemental or superseding regula-
4 tions pursuant to section 809(b) of title 17, United States
5 Code.

6 (b) PROCEEDINGS IN PROGRESS.—

7 (1) COPYRIGHT ARBITRATION ROYALTY PANEL
8 PROCEEDINGS.—Unless the Register of Copyrights,
9 for good cause, finds otherwise, proceedings in which
10 a copyright arbitration royalty panel has been con-
11 vened by the Librarian of Congress under chapter 8
12 of title 17, United States Code, as in effect before
13 the effective date of this Act, shall continue in effect
14 and shall be governed under chapter 8 of such title,
15 and applicable regulations, as in effect prior to such
16 effective date. Proceedings in which a copyright arbi-
17 tration royalty panel has not been convened by the
18 Librarian of Congress under chapter 8 of title 17,
19 United States Code, before the effective date of this
20 Act shall be suspended and recommenced under the
21 amendments made by section 7.

22 (2) CONTINUED PROCEEDINGS.—For those pro-
23 ceedings continued under paragraph (1), the func-
24 tions of the Librarian of Congress and the Register
25 of Copyrights relating to the report of the copyright

1 arbitration royalty panel under title 17, United
2 States Code, as in effect before the effective date of
3 this Act, may, in the Librarian's discretion, upon the
4 recommendation of the Register of Copyrights, be
5 delegated to the Copyright Royalty Adjudication
6 Board, when constituted.

7 (3) APPEALS.—In any appeal of a decision of
8 the Librarian of Congress adopting or rejecting a
9 determination of a copyright arbitration royalty
10 panel which is pending in the United States Court
11 of Appeals for the District of Columbia Circuit on
12 or after the effective date of this Act, if such case
13 is remanded by the court, the Librarian of Congress
14 shall not reconvene the copyright arbitration royalty
15 panel which rendered the determination, but shall
16 direct the Copyright Royalty Adjudication Board,
17 when constituted, to conduct proceedings in accord-
18 ance with the directions of the court.

19 (c) EFFECTIVENESS OF EXISTING RATES AND DIS-
20 TRIBUTIONS.—All royalty rates and all determinations
21 with respect to the proportionate division of compulsory
22 license fees among copyright claimants, whether made by
23 the Copyright Royalty Tribunal, copyright arbitration roy-
24 alty panels, or by voluntary agreement, before the effective
25 date of this Act, shall remain in effect until modified by

1 voluntary agreement or pursuant to the amendments
2 made by this Act.

3 (d) TRANSFER OF APPROPRIATIONS.—All unex-
4 pended balances of appropriations made by the Copyright
5 Office for the support of the copyright arbitration royalty
6 panels, as of the effective date of this Act, are transferred
7 on such effective date to the support of the Copyright Roy-
8 alty Arbitration Board for the purposes for which such
9 appropriations were made.

10 **SEC. 9. AMENDMENTS TO OTHER PROVISIONS OF TITLE 17,**
11 **UNITED STATES CODE.**

12 (a) SECONDARY TRANSMISSIONS BY CABLE SYS-
13 TEMS.—Section 111(d) of title 17, United States Code,
14 is amended—

15 (1) in paragraph (2)—

16 (A) in the last sentence by striking “Li-
17 brarian of Congress” and all that follows
18 through the end of the sentence and inserting
19 the following: “Copyright Royalty Adjudication
20 Board as provided in this title. The Register of
21 Copyrights may, 4 or more years after the close
22 of any calendar year, close out the account for
23 royalty payments made for that calendar year,
24 and may treat any funds remaining in such ac-
25 count and any subsequent deposits that would

1 otherwise be attributable to that calendar year
2 as attributable to the succeeding calendar
3 year.”;

4 (2) in paragraph (3)(A), by striking “nonnet-
5 work”;

6 (3) in paragraph (4)—

7 (A) in subparagraph (A)—

8 (i) by striking “Librarian of Con-
9 gress” the first place it appears and insert-
10 ing “Copyright Royalty Adjudication
11 Board”; and

12 (ii) by striking “Librarian of Con-
13 gress” the second place it appears and in-
14 serting “Board”;

15 (B) in subparagraph (B)—

16 (i) by striking “Librarian of Congress
17 shall, upon the recommendation of the
18 Register of Copyrights” and inserting
19 “Copyright Royalty Adjudication Board
20 shall”;

21 (ii) by striking “Librarian” each sub-
22 sequent place it appears and inserting
23 “Board”; and

24 (iii) in the last sentence by striking
25 “convene a copyright royalty arbitration

1 panel” and inserting “conduct a proceed-
2 ing”; and

3 (C) in subparagraph (C)—

4 (i) by striking “Librarian of Con-
5 gress” and inserting “Copyright Royalty
6 Adjudication Board”; and

7 (ii) by adding at the end the follow-
8 ing: “The action of the Board to distribute
9 royalty fees may precede the declaration of
10 a controversy if all parties to the proceed-
11 ing file a petition with the Board request-
12 ing such distribution, except that such
13 amount may not exceed 50 percent of the
14 amounts on hand at the time of the re-
15 quest.”.

16 (b) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RE-
17 CORDINGS.—Section 114(f) of title 17, United States
18 Code, is amended—

19 (1) in paragraph (1)—

20 (A) by amending the first sentence to read
21 as follows: “During the first week of January,
22 2000, the Copyright Royalty Adjudication
23 Board shall cause notice to be published in the
24 Federal Register of the initiation of voluntary
25 negotiation proceedings for the purpose of de-

1 termining or adjusting reasonable terms and
2 rates of royalty payments for the activities spec-
3 ified in subsection (d)(2) of this section.”; and

4 (B) in the third sentence by striking “Li-
5 brarian of Congress” and inserting “Copyright
6 Royalty Adjudication Board”;

7 (2) by striking paragraphs (2), (3), and (4) and
8 inserting the following:

9 “(2) In the absence of license agreements nego-
10 tiated under paragraph (1), during the 60-day pe-
11 riod beginning 6 months after publication of the no-
12 tice specified in paragraph (1), and upon the filing
13 of a petition in accordance with section 808(a), the
14 Copyright Royalty Adjudication Board shall, pursu-
15 ant to chapter 8, conduct a proceeding to determine
16 and publish in the Federal Register a schedule of
17 rates and terms. In addition to the objectives set
18 forth in section 807(a) in establishing or adjusting
19 such rates and terms, the Board may consider the
20 rates and terms for comparable types of digital
21 audio transmission services and comparable cir-
22 cumstances under voluntary license agreements ne-
23 gotiated as provided in paragraph (1). The Copy-
24 right Royalty Adjudication Board, upon the approval
25 of the Register of Copyrights, shall also establish re-

1 quirements by which copyright owners may receive
2 reasonable notice of the use of their sound record-
3 ings under this section, and under which records of
4 such use shall be kept and made available by entities
5 performing sound recordings.

6 “(3) License agreements voluntarily negotiated
7 at any time between 1 or more copyright owners of
8 sound recordings and 1 or more entities performing
9 sound recordings shall be given effect in lieu of any
10 determination by the Copyright Royalty Adjudica-
11 tion Board.

12 “(4) Publication of a notice of the initiation of
13 voluntary negotiation proceedings as specified in
14 paragraph (1) and the procedures specified in para-
15 graph (2) shall be repeated, in accordance with regu-
16 lations that the Copyright Royalty Adjudication
17 Board, upon the approval of the Register of Copy-
18 rights, shall prescribe—

19 “(A) no later than 30 days after a petition
20 is filed by any copyright owners of sound re-
21 cordings or any entities performing sound re-
22 cordings affected by this section indicating that
23 a new type of digital audio transmission service
24 on which sound recordings are performed is or
25 is about to become operational; and

1 “(B) during the first week of January
2 2005 and at 5-year intervals thereafter.”; and
3 (3) in paragraph (5)(A)(i) by striking “Librar-
4 ian of Congress” and inserting “Copyright Royalty
5 Adjudication Board, upon the approval of the Reg-
6 ister of Copyrights,”.

7 (c) COMPULSORY LICENSE FOR MAKING AND DIS-
8 TRIBUTING PHONORECORDS.—Section 115(c)(3) of title
9 17, United States Code, is amended—

10 (1) in subparagraph (C)—

11 (A) by amending the first sentence to read
12 as follows: “At the times established in sub-
13 paragraph (F), the Copyright Royalty Adjudica-
14 tion Board shall cause notice to be published in
15 the Federal Register of the initiation of vol-
16 untary negotiation proceedings for the purpose
17 of determining reasonable terms and rates of
18 royalty payments for the activities specified in
19 subparagraph (A) until the effective date of any
20 new terms and rates established pursuant to
21 this subparagraph or subparagraph (D) or (F),
22 or such other date (regarding digital phono-
23 record deliveries) as the parties may agree.”;

1 (B) in the third sentence by striking “Li-
2 brarian of Congress” and inserting “Copyright
3 Royalty Adjudication Board”;

4 (2) by amending subparagraph (D) to read as
5 follows:

6 “(D) In the absence of license agreements nego-
7 tiated under subparagraphs (B) and (C), upon the
8 filing of a petition in accordance with section 808(a),
9 the Copyright Royalty Adjudication Board shall,
10 pursuant to chapter 8, conduct a proceeding to de-
11 termine and publish in the Federal Register a sched-
12 ule of rates and terms. Such rates and terms shall
13 distinguish between—

14 “(i) digital phonorecord deliveries where
15 the reproduction or distribution of a phono-
16 record is incidental to the transmission which
17 constitute the digital phonorecord delivery, and

18 “(ii) digital phonorecord deliveries in gen-
19 eral.

20 In addition to the objectives set forth in section
21 807(a), in establishing or adjusting rates and terms,
22 the Board may consider rates and terms under vol-
23 untary license agreements negotiated as provided in
24 subparagraphs (B) and (C). The Board, upon the
25 approval of the Register of Copyrights, shall also es-

1 tablish requirements by which copyright owners may
 2 receive reasonable notice of the use of their works
 3 under this section, and under which records of such
 4 use shall be kept and made available by persons
 5 making digital phonorecord deliveries.”;

6 (3) in subparagraph (E)(i) in the first sentence
 7 by striking “Librarian of Congress” and inserting
 8 “Copyright Royalty Adjudication Board”; and

9 (4) in subparagraph (F) by striking “Librarian
 10 of Congress” and inserting “ Copyright Royalty Ad-
 11 judication Board, upon the approval of the Register
 12 of Copyrights,”.

13 (d) NEGOTIATED LICENSES FOR PUBLIC PERFORM-
 14 ANCES BY MEANS OF COIN-OPERATED PHONORECORD
 15 PLAYERS.—Section 116 of title 17, United States Code,
 16 is amended—

17 (1) by amending subsection (b)(2) to read as
 18 follows:

19 “(2) RATE ADJUSTMENT PROCEEDING.—Par-
 20 ties not subject to such a negotiation may determine,
 21 by a rate adjustment proceeding in accordance with
 22 the provisions of chapter 8, the terms and rates and
 23 the division of fees described in paragraph (1).”; and

24 (2) in subsection (c)—

1 (A) in the subsection heading by
2 striking “COPYRIGHT ROYALTY ARBITRA-
3 TION PANEL” and inserting “COPYRIGHT
4 ROYALTY ADJUDICATION BOARD”; and

5 (B) by striking “a copyright arbitration
6 royalty panel” and inserting “the Copyright
7 Royalty Adjudication Board”.

8 (e) USE OF CERTAIN WORKS IN CONNECTION WITH
9 NONCOMMERCIAL BROADCASTING.—Section 118 of title
10 17, United States Code, is amended—

11 (1) in subsection (b)—

12 (A) by striking paragraph (1) and redesignig-
13 nating paragraphs (2) and (3) as paragraphs
14 (1) and (2), respectively;

15 (B) in paragraph (1), as so redesignated,
16 by striking “Librarian of Congress” and insert-
17 ing “Copyright Royalty Adjudication Board”;

18 (C) in paragraph (2), as so redesignated—

19 (i) by striking “paragraph (2)” each
20 place it appears and inserting “paragraph
21 (1)”;

22 (ii) by striking “Librarian of Con-
23 gress” the first place it appears and insert-
24 ing “Copyright Royalty Adjudication
25 Board”;

1 (iii) by striking “Librarian of Con-
2 gress” the second and third places it ap-
3 pears and inserting “Board”; and

4 (iv) by striking “Librarian of Con-
5 gress” the last place it appears and insert-
6 ing “Board, upon the approval of the Reg-
7 ister of Copyrights,”;

8 (2) in subsection (c)—

9 (A) by striking “1997” and inserting
10 “2002”; and

11 (B) by striking “Librarian of Congress”
12 and inserting “Copyright Royalty Adjudication
13 Board, upon the approval of the Register of
14 Copyrights,”;

15 (3) in subsection (d)—

16 (A) by striking “(b)(2)” and inserting
17 “(b)(1)”; and

18 (B) by striking “a copyright arbitration
19 royalty panel under subsection (b)(3)” and in-
20 serting “the Copyright Royalty Adjudication
21 Board under subsection (b)(2)”; and

22 (4) in subsection (e), by striking paragraphs (1)
23 and (2).

24 (f) DIGITAL AUDIO RECORDING DEVICES AND
25 MEDIA.—

1 (1) ROYALTY PAYMENTS.—Section 1004(a)(3)
2 of title 17, United States Code, is amended in the
3 third sentence—

4 (A) by striking “the 6th year after the ef-
5 fective date of this chapter” and inserting
6 “1998”;

7 (B) by striking “Librarian of Congress”
8 the first place it appears and inserting “Copy-
9 right Royalty Adjudication Board”; and

10 (C) by striking “Librarian of Congress”
11 the second place it appears and inserting
12 “Board”.

13 (2) ENTITLEMENT TO ROYALTY PAYMENTS.—
14 Section 1006(c) of title 17, United States Code, is
15 amended by striking “Librarian of Congress shall
16 convene a copyright arbitration royalty panel which”
17 and inserting “Copyright Royalty Adjudication
18 Board”.

19 (3) PROCEDURES FOR DISTRIBUTING ROYALTY
20 PAYMENTS.—Section 1007 of title 17, United States
21 Code, is amended—

22 (A) in subsection (a)(1)—

23 (i) by striking “after the calendar
24 year in which this chapter takes effect”;

1 (ii) by striking “Librarian of Con-
2 gress” the first place it appears and insert-
3 ing “Copyright Royalty Adjudication
4 Board”; and

5 (iii) by striking “Librarian of Con-
6 gress” the second place it appears and in-
7 serting “Board”;

8 (B) in subsection (b)—

9 (i) by amending the first sentence to
10 read as follows: “After the first day of
11 March of each year, the Copyright Royalty
12 Adjudication Board shall determine wheth-
13 er there exists a controversy concerning
14 the distribution of royalty payments under
15 section 1006(c).”; and

16 (ii) by striking “Librarian of Con-
17 gress” each place it appears and inserting
18 “Board”; and

19 (C) in subsection (c)—

20 (A) by amending the first sentence to
21 read as follows: “If the Copyright Royalty
22 Adjudication Board finds the existence of a
23 controversy, the Board shall, pursuant to
24 chapter 8 of this title, conduct a proceed-

ing to determine the distribution of royalty payments.”;

(B) by striking “Librarian of Congress” each place it appears and inserting “Board”; and

(C) by striking “Librarian under this section” and inserting “Board under this section. The action of the Board to distribute royalty fees may precede the declaration of a controversy if all parties to the proceeding file a petition with the Board requesting such distribution, except that such amount may not exceed 50 percent of the amounts on hand at the time of the request.”.

(4) ADJUDICATION OF CERTAIN DISPUTES.—Section 1010 of title 17, United States Code, is amended—

(A) by amending the section heading to read as follows:

“§ 1010. Adjudication of certain disputes”;

(B) in subsection (a)—

(i) in the subsection heading by striking “ARBITRATION” and inserting “ADJUDICATION”; and

1 (ii) by striking “mutually agree
2 to binding arbitration for the purpose
3 of determining” and inserting “peti-
4 tion the Copyright Royalty Adjudica-
5 tion Board to determine”;

6 (C) by striking subsection (b) and re-
7 designating subsections (c) and (d) as sub-
8 sections (b) and (c), respectively;

9 (D) in subsection (b), as so redesign-
10 nated, by striking “arbitration” each place
11 it appears and inserting “adjudication”;

12 (E) by amending subsection (c), as so
13 redesignated, to read as follows:

14 “(c) ADJUDICATION PROCEEDING.—The Copyright
15 Royalty Adjudication Board shall conduct an adjudication
16 proceeding with respect to the matter concerned, pursuant
17 to chapter 8 of this title. The parties to the proceeding
18 shall bear the entire costs thereof in such manner and pro-
19 portion as the Board shall direct.”; and

20 (F) by striking subsections (e), (f),
21 and (g).

22 **SEC. 10. TECHNICAL AMENDMENTS.**

23 (a) CLERICAL AMENDMENT TO CHAPTER 10 OF
24 TITLE 17, UNITED STATES CODE.—The item relating to
25 section 1010 in the table of contents for chapter 10 of

1 title 17, United States Code, is amended to read as fol-
 2 lows:

“1010. Adjudication of certain disputes.”.

3 (b) CLERICAL AMENDMENT TO CHAPTER 9 OF TITLE
 4 17, UNITED STATES CODE.—The item relating to section
 5 903 in the table of contents for chapter 9 of title 17,
 6 United States Code, is amended to read as follows:

“903. Ownership, transfer, licensing, and recordation.”.

7 (c) CLERICAL AMENDMENT TO TABLE OF CHAP-
 8 TERS.—The item relating to chapter 6 in the table of
 9 chapters for title 17, United States Code, is amended to
 10 read as follows:

“6. Manufacturing Requirements and Importation 601”.

11 **SEC. 11. RETRANSMISSION CONSENT.**

12 Section 325(b) of the Communications Act of 1934
 13 (47 U.S.C. 325(b)) is amended—

14 (1) by striking paragraphs (1) and (2) and in-
 15 serting the following:

16 “(b)(1) No cable system or other multichannel video
 17 programming distributor shall retransmit the signal of a
 18 broadcasting station, or any part thereof, except—

19 “(A) with the express authority of the station;

20 “(B) pursuant to section 614, in the case of a
 21 station electing, in accordance with this subsection,
 22 to assert the right to carriage under such section; or

1 “(C) pursuant to section 337, in the case of a
2 station electing, in accordance with this subsection,
3 to assert the right to carriage under such section.

4 “(2) The provisions of this subsection shall not apply
5 to—

6 “(A) retransmission of the signal of a non-
7 commercial broadcasting station;

8 “(B) retransmission of the signal of a supersta-
9 tion by a satellite carrier to subscribers for private
10 home viewing if the originating station was a super-
11 station on January 1, 1998;

12 “(C) retransmission of the signal of a broad-
13 casting station that is owned or operated by, or af-
14 filiated with, a broadcasting network directly to a
15 home satellite antenna, if the household receiving
16 the signal is located in an area in which such station
17 may not assert its rights not to have its signal dupli-
18 cated under the Commission’s network nonduplica-
19 tion regulations; or

20 “(D) retransmission by a cable operator or
21 other multichannel video programming distributor of
22 the signal of a superstation if such signal was ob-
23 tained from a satellite carrier and the originating
24 station was a superstation on January 1, 1998.”;

1 (2) by adding at the end of paragraph (3) the
2 following new subparagraph:

3 “(C) Within 45 days after the effective date of the
4 Copyright Compulsory License Improvement Act, the
5 Commission shall commence a rulemaking proceeding to
6 revise the regulations governing the exercise by television
7 broadcast stations of the right to grant retransmission
8 consent under this subsection, and such other regulations
9 as are necessary to administer the limitation contained in
10 paragraph (2). Such regulations shall establish election
11 time periods that correspond with those regulations adopt-
12 ed under subparagraph (B). The rulemaking shall be com-
13 pleted within 180 days after the effective date of the Copy-
14 right Compulsory License Improvement Act.”; and

15 (3) by adding at the end the following new
16 paragraph:

17 “(7) For purposes of this subsection:

18 “(A) The term ‘superstation’ means a television
19 broadcast station, other than a network station, li-
20 censed by the Commission that is secondarily trans-
21 mitted by a satellite carrier.

22 “(B) The term ‘satellite carrier’ has the mean-
23 ing given that term in section 119(d) of title 17,
24 United States Code.”.

1 **SEC. 12. MUST-CARRY FOR SATELLITE CARRIERS RE-**
2 **TRANSMITTING TELEVISION BROADCAST SIG-**
3 **NALS.**

4 Title III of the Communications Act of 1934 is
5 amended by inserting after section 336 the following new
6 section:

7 **“SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
8 **SATELLITE CARRIERS.**

9 “(a) CARRIAGE OBLIGATIONS.—Each satellite carrier
10 providing direct to home service of a television broadcast
11 station to subscribers located within the local market of
12 such station shall carry all television broadcast stations
13 located within that local market. Carriage of additional
14 television broadcast stations within the local market shall
15 be at the discretion of the satellite carrier, subject to sec-
16 tion 325(b).

17 “(b) DUPLICATION NOT REQUIRED.—Notwithstand-
18 ing subsection (a), a satellite carrier shall not be required
19 to carry the signal of any local television broadcast station
20 that substantially duplicates the signal of another local tel-
21 evision broadcast station which is secondarily transmitted
22 by the satellite carrier, or to carry the signals of more
23 than one local television broadcast station affiliated with
24 a particular broadcast network (as the term is defined by
25 regulation).

1 “(c) CHANNEL POSITIONING.—Each signal carried in
2 fulfillment of the carriage obligations of a satellite carrier
3 under this section shall be carried on the satellite carrier
4 channel number on which the local television broadcast
5 station is broadcast over the air, or on the channel on
6 which it was broadcast on January 1, 1985, or on the
7 channel it was broadcast on January 1, 1998, at the elec-
8 tion of the station, or on such other channel number as
9 is mutually agreed upon by the station and the satellite
10 carrier. Any dispute regarding the positioning of local tele-
11 vision broadcast stations shall be resolved by the Commis-
12 sion.

13 “(d) COMPENSATION FOR CARRIAGE.—A satellite
14 carrier shall not accept or request monetary payment or
15 other valuable consideration in exchange either for car-
16 riage of local television broadcast stations in fulfillment
17 of the requirements of this section or for channel position-
18 ing rights provided to such stations under this section, ex-
19 cept that any such station may be required to bear the
20 costs associated with delivering a good quality signal to
21 the principal headend of the satellite carrier.

22 “(e) REMEDIES.—

23 “(1) COMPLAINTS BY BROADCAST STATIONS.—

24 Whenever a local television broadcast station believes
25 that a satellite carrier has failed to meet its obliga-

1 tions under this section, such station shall notify the
2 carrier, in writing, of the alleged failure and identify
3 its reasons for believing that the satellite carrier is
4 obligated to carry the signal of such station or has
5 otherwise failed to comply with the channel position-
6 ing or repositioning or other requirements of this
7 section. The satellite carrier shall, within 30 days of
8 such written notification, respond in writing to such
9 notification and either commence to carry the signal
10 of such station in accordance with the terms re-
11 quested or state its reasons for believing that it is
12 not obligated to carry such signal or is in compliance
13 with the channel positioning and repositioning or
14 other requirements of this section. A local television
15 broadcast station that is denied carriage or channel
16 positioning or repositioning in accordance with this
17 section by a satellite carrier may obtain review of
18 such denial by filing a complaint with the Commis-
19 sion. Such complaint shall allege the manner in
20 which such satellite carrier has failed to meet its ob-
21 ligations and the basis for such allegations.

22 “(2) OPPORTUNITY TO RESPOND.—The Com-
23 mission shall afford such satellite carrier and oppor-
24 tunity to present data and arguments to establish

1 that there has been no failure to meet its obligations
2 under this section.

3 “(3) REMEDIAL ACTIONS; DISMISSAL.—Within
4 120 days after the date a complaint is filed, the
5 Commission shall determine whether the satellite
6 carrier has met its obligations under this section. If
7 the Commission determines that the satellite carrier
8 has failed to meet such obligations, the Commission
9 shall order the satellite carrier to reposition the com-
10 plaining station or, in the case of an obligation to
11 carry a station, to commence carriage of the station
12 and to continue such carriage for at least 12
13 months. If the Commission determines that the sat-
14 ellite carrier has fully met the requirements of this
15 section, it shall dismiss the complaint.

16 “(f) REGULATIONS BY COMMISSION.—Within 180
17 days after the effective date of this section, the Commis-
18 sion shall, following a rulemaking proceeding, issue regula-
19 tions implementing the requirements imposed by this sec-
20 tion.

21 “(g) DEFINITIONS.—As used in this section:

22 “(1) TELEVISION BROADCAST STATION.—The
23 term ‘television broadcast station’ means a full-
24 power television broadcast station, and does not in-

1 clude a low-power or translator television broadcast
2 station.

3 “(2) LOCAL MARKET.—The term ‘local market’
4 means the designated market area in which a station
5 is located and—

6 “(A) for a commercial television broadcast
7 station located in any of the 150 largest des-
8 ignated market areas, all commercial television
9 broadcast stations licensed to a community
10 within the same designated market area are
11 within the same local market;

12 “(B) for a commercial television broadcast
13 station that is located in a designated market
14 area that is not one of the 150 largest, the local
15 market includes, in addition to all commercial
16 television broadcast stations licensed to a com-
17 munity within the same designated market
18 area, any station that is significantly viewed, as
19 such term is defined in section 76.54 of the
20 Commission’s regulations (47 C.F.R. 76.54);
21 and

22 “(C) for a noncommercial educational tele-
23 vision broadcast station, the local market in-
24 cludes any station that is licensed to a commu-
25 nity within the same designated market area as

1 the noncommercial educational television broad-
2 cast station.

3 “(3) DESIGNATED MARKET AREA.—The term
4 ‘designated market area’ means a designated market
5 area, as determined by the Nielsen Media Research
6 and published in the DMA Market and Demographic
7 Report.”.

8 **SEC. 13. NETWORK NONDUPLICATION; SYNDICATED EXCLU-**
9 **SIVITY AND SPORTS BLACKOUT.**

10 (a) REGULATIONS.—

11 (1) IN GENERAL.—Within 45 days after the ef-
12 fective date of this Act, the Federal Communications
13 Commission shall commence a rulemaking to estab-
14 lish regulations that apply network nonduplication
15 protection, syndicated exclusivity protection, and
16 sports blackout protection to the retransmission of
17 broadcast signals by satellite carriers to subscribers
18 for private home viewing. To the extent possible,
19 such regulations shall, subject to paragraph (2), in-
20 clude the same level of protection accorded retrans-
21 missions of television broadcast signals by cable sys-
22 tems for network nonduplication (47 C.F.R. 76.92),
23 syndicated exclusivity (47 C.F.R. 151), and sports
24 blackout (47 C.F.R. 76.67).

1 (2) NETWORK NONDUPLICATION.—The network
2 nonduplication regulations required under paragraph
3 (1) shall allow a television broadcast station in any
4 local market to assert nonduplication rights—

5 (A) against a satellite carrier throughout
6 such local market if that satellite carrier re-
7 transmits to subscribers for private home view-
8 ing in such local market the signal of another
9 television broadcast station located within such
10 local market; or

11 (B) against all satellite carriers within the
12 zone in which the television broadcast station
13 may be received over-the-air, using conventional
14 consumer television receiving equipment, as de-
15 termined under regulations prescribed by the
16 Federal Communications Commission, but such
17 zone shall not extend beyond such local market
18 of such station.

19 (3) LOCAL MARKET DEFINED.—The term “local
20 market” has the meaning provided in section 337(g)
21 of the Communications Act of 1934, as added by
22 section 12 of this Act.

23 (b) DEFERRED APPLICABILITY OF AMENDMENTS TO
24 SECTION 119 OF TITLE 17, UNITED STATES CODE.—
25 Notwithstanding the amendments to section 119 of title

1 17, United States Code, made by this Act, until the regu-
2 lations regarding network nonduplication protection are
3 established under subsection (a), the statutory license
4 under subsection (a) of such section 119 for secondary
5 transmissions of primary transmissions of programming
6 contained in a primary transmission made by a network
7 station (as defined in section 119(d) of title 17, United
8 States Code, as in effect on the day before the effective
9 date of this Act) shall be limited to secondary trans-
10 missions to persons who reside in unserved households (as
11 defined in section 119(d) of title 17, United States Code,
12 as in effect on the day before the effective date of this
13 Act).

14 **SEC. 14. EFFECTIVE DATE.**

15 This Act and the amendments made by this Act shall
16 take effect on January 1, 1999.

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